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14 CLERK, U.S. DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND
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18 E-filing
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20 ADR

21 THE UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
23

24 WILLIAM COOKSON

25 Plaintiff,

26 v.

27 NEW UNITED MOTOR
28 MANUFACTURING, INC., TOYOTA
29 MOTOR CORPORATION AND TOYOTA
MOTOR SALES USA

Defendants.

24 Case No. C10-02931 EDL

25 COMPLAINT FOR DECLARATORY AND
26 INJUNCTIVE RELIEF AND DAMAGES FOR
27 VIOLATIONS OF: THE AMERICANS WITH
28 DISABILITIES ACT; THE FAIR EMPLOYMENT
29 AND HOUSING ACT; THE UNFAIR BUSINESS
PRACTICES ACT; AND CALIFORNIA'S PUBLIC
POLICIES

DEMAND FOR JURY TRIAL

GO 44 SEC. N
NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE

Plaintiff WILLIAM COOKSON on behalf of himself for claims for relief against defendants, and each of them, alleges:

NATURE OF THIS ACTION

26 1. This is lawsuit against New United Motor Manufacturing, Inc. (NUMMI), Toyota Motor
27 Corporation and Toyota Motor Sales USA (Collectively referred to as Toyota) for violations of
28 plaintiff's civil rights in contravention of the Americans with Disabilities Act of 1990 (ADA), 42
29

COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

1 U.S.C. § 12101, *et seq.*, the Fair Employment and Housing Act (FEHA), Cal. Gov't Code §
2 12900, *et seq.*, the Unfair Business Practices Act, Cal. Business & Prof. Code § 17200, *et seq.*,
3 and California's public policy. Plaintiff is a former worker of the now closed Fremont,
4 California NUMMI plant who was denied severance benefits worth many thousands of dollars
5 that other laid off workers received. These benefits were supposedly based on length of
6 employment, but denied in whole or in part to disabled workers who were on a leave of absence
7 at any time between October 1, 2009 and April 1, 2010 when the plant closed, regardless of how
8 long the worker had been employed by defendants. In addition, the disabled workers have been
9 denied transitional employment services, such as career and skills assessments.

10 2. Between August and November 2009, officials of Defendants NUMMI and TOYOTA
11 began a series of announcements regarding the planned closure of the NUMMI plant in Fremont,
12 California. On April 1, 2010, Defendant NUMMI closed the plant and its 5,400 employees lost
13 their jobs, including Plaintiff.

14 3. Between October 2009 and April 1, 2010, Defendant NUMMI failed and refused to
15 reinstate and accommodate Plaintiff COOKSON who sought to return to work with or without
16 reasonable accommodations.

17 4. On or around November 2009, and through around March 19, 2010, Defendant NUMMI
18 offered transitional services to its employees, including access to a one-stop center, career and
19 educational fairs, and skills assessments. Transitional services were made available only to
20 NUMMI employees who were actively working. Plaintiff here – on leave because of his
21 disabilities and/or because of Defendant NUMMI's refusal to accommodate his disabilities – was
22 denied these critical benefits without justification.

23 5. On or around March 15, 2010, Defendants NUMMI and TOYOTA announced a proposed
24 severance package. In exchange for a general release of claims against Defendant NUMMI, the
25 package provides a base payout of \$21,175.00 together with an additional payment – an average
26 amount of \$32,000, with individual amounts varying depending upon years of service – for
27 employees who worked between October 1, 2009 and April 1, 2010. This additional payment is
28 labeled a “retention bonus” by Defendants, but it is not a true “retention bonus.” By the time the
29

1 severance package was announced, virtually all of the time period at issue had already elapsed.
2 Nor was the massive enhancement required to ensure efficient production. Plaintiff – on leave
3 because of his disabilities and/or Defendant NUMMI's refusal to accommodate his disabilities –
4 has been denied the bonus enhancement without justification.

5 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant TOYOTA
6 together with Defendant NUMMI conceived, influenced, designed, required, and/or and directed
7 the discriminatory terms of the severance package.

8 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant NUMMI failed
9 and refused to reinstate and accommodate Plaintiff COOKSON as part of an unlawful scheme to
10 deny such disabled employees the benefits of transitional vocational services and/or the bonus
11 enhancement.

12 8. Plaintiff seeks declaratory and injunctive relief, reformation of the severance agreement,
13 restitution, lost compensation and other employment benefits and compensatory and punitive
14 damages, and reasonable attorneys' fees and costs, for defendants' violations of his rights.

JURISDICTION AND VENUE

16 9. This court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C.
17 § 1331. This is an action arising under the ADA.

18 10. This court has supplemental jurisdiction over the related state law claims pursuant to 28
19 U.S.C. § 1367(a). Plaintiff's claims under the FEHA, the Unfair Business Practices Act and
20 California's public policy are related, as all of plaintiff's claims share common operative facts.
21 Resolving all state and federal claims in a single action serves the interests of judicial economy,
22 convenience and fairness to the parties.

23 11. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1331(b),
24 because the events giving rise to plaintiff's claims occurred in this District.

PARTIES

26 12. Plaintiff is a former employee of NUMMI at its Fremont plant. Plaintiff is a qualified
27 individual with disabilities under Title I of the ADA and the FEHA. In addition to having an
28 actual disability, Plaintiff has a record of disability within the meaning of state and federal

1 disability nondiscrimination laws. Plaintiff is informed and believes, and thereon alleges, that
2 Defendants also regarded him as disabled within the meaning of state and federal disability
3 nondiscrimination laws.

4 13. Defendant New United Motor Manufacturing, Inc. (NUMMI) began as a joint venture
5 between Defendant Toyota Motor Corporation (TOYOTA) and General Motors Corporation. In
6 June 2009, General Motors went bankrupt and withdrew from the partnership. NUMMI is a
7 California corporation with headquarters in Fremont, California. Defendant NUMMI is an
8 employer covered by the ADA and the FEHA in that it employs, and at all times relevant
9 employed, at least 15 employees.

10 14. Defendant TOYOTA MOTOR CORPORATION is a shareholder and affiliated entity of
11 Defendant NUMMI. Plaintiff is informed and believes, and thereupon alleges, that Defendant
12 TOYOTA MOTOR CORPORATION participated in the unlawful actions and inactions
13 described herein. Defendant TOYOTA MOTOR CORPORATION is a Japanese corporation
14 that maintains offices throughout California.

15 15. Defendant TOYOTA MOTORS SALES USA is a wholly-owned subsidiary of Defendant
16 TOYOTA MOTOR CORPORATION. Plaintiff is informed and believes, and thereupon
17 alleges, that Defendant TOYOTA MOTORS SALES USA participated in the unlawful actions
18 and inactions described herein. Defendant TOYOTA MOTORS SALES USA is an American
19 corporation with headquarters in San Ramon, California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Plaintiff has exhausted all administrative remedies. He filed timely administrative
charges of discrimination with the Equal Employment Opportunity Commission (EEOC) and the
California Department of Fair Employment and Housing (DFEH) alleging claims against
Defendants NUMMI and TOYOTA. A copy of Plaintiff's charge is attached hereto as Exhibit A.

25 17. Plaintiff received his right to sue letters from the EEOC and the DFEH and has
26 commenced this action in a timely manner.

FACTS COMMON TO ALL CAUSES OF ACTION

28 18. On or around March 15, 2010, Plaintiff COOKSON was notified that Defendant NUMMI
29

1 was offering a separation package for all employees. Although rumors about the severance
2 began circulating almost as soon as the plant closure was announced, the details of the severance
3 package were not released until on or after March 15, 2010, and the proposal was not approved
4 until March 17, 2010. Plaintiff is informed and believes, and thereupon alleges, that Defendant
5 TOYOTA together with Defendant NUMMI designed and implemented the separation package.

6 19. The separation package includes a basic amount for all employees as well as a bonus
7 enhancement for employees who worked at the facility between October 2009 and April 1, 2010.
8 The general release required of employees to receive the basic bonus and the bonus enhancement
9 purports to extinguish any and all claims against Defendants NUMMI.

10 20. Plaintiff WILLIAM COOKSON was employed by Defendant NUMMI since 1985. In
11 June 2009, Plaintiff COOKSON experienced a work-related injury to his wrist, shoulders, neck
12 and back. Plaintiff COOKSON experiences pain which affects his ability to sit and drive and
13 causes numbness in his hands. Plaintiff COOKSON is a person with a disability.

14 21. Following his injury, Plaintiff COOKSON returned to work with a thirty pound lifting
15 restriction. Plaintiff COOKSON attempted to return to work but Defendant NUMMI failed and
16 refused to accommodate Plaintiff COOKSON's disability. Plaintiff COOKSON is a qualified
17 individual with a disability. Defendant NUMMI refused to retain Plaintiff COOKSON on active
18 duty in violation of his rights under state and federal laws, and he was placed on leave. Plaintiff
19 COOKSON is informed and believes, and thereupon alleges, that in failing to retain him on
20 active duty, Defendant NUMMI furthered its scheme to deny employees bonus enhancements
21 and other benefits on the basis of disability.

22 22. Defendants NUMMI and TOYOTA are denying Plaintiff COOKSON most of the bonus
23 enhancement, and Defendant NUMMI denied him most access to transitional career services in
24 the form of career and education fairs and career assessments, because he was on leave due to his
25 disability and did not work at the facility on most of the days between October 2009 and April 1,
26 2010.

27 23. Plaintiff has received a severance package offering \$21,175.00 in exchange for signing a
28 general release of claims – including the claims of disability discrimination alleged herein – prior

1 to August 1, 2010. The severance package is a contract of adhesion entered into between
2 unequal bargaining partners which releases the right's of the Plaintiff but does not release any
3 rights of the Defendants. The severance package incorporates an illegal provision which has the
4 purpose and effect of discriminating against persons with disabilities who were on leave. Prior to
5 offering the severance package, Defendants never disclosed to Plaintiff that being on a leave of
6 absence would reduce his rights to a retention bonus or that defendants would actively refuse to
7 reinstate Plaintiff. Given the economic realities, including the extreme disparities in bargaining
8 power and wealth, together with the continuing economic downturn and high rates of
9 unemployment affecting the entire State of California, the discriminatory severance package
10 proffers an unconscionable contract with unlawful terms which discriminates against workers
11 with disabilities including Plaintiff and threatens to permit the Defendants to evade the
12 consequences of their unlawful conduct.

13 **DECLARATORY RELIEF ALLEGATIONS**

14 24. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
15 paragraphs 1 through 23, above.

16 25. An actual controversy exists between plaintiff and defendants concerning his respective
17 rights and duties. Plaintiff contends that defendants willfully violated his rights under the ADA,
18 the FEHA, the Unfair Business Practices Act, and California's public policy. Plaintiff further
19 contends that the severance package provisions denying full benefits to plaintiff is
20 unconscionable. Plaintiff is informed and believes, and based thereon alleges, that defendants
21 deny that these actions were unlawful. Declaratory relief is therefore necessary and appropriate.

22 26. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties,
23 including a declaration of defendants' duty to comply with the law.

24 **INJUNCTIVE RELIEF ALLEGATIONS**

25 27. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
26 paragraphs 1 through 26, above.

27 28. No previous application for the injunctive relief sought herein has been made to this
28 Court.

29. If this Court does not grant the injunctive relief sought herein, plaintiff will be irreparably harmed.

30. No plain, adequate, or complete remedy at law is available to plaintiff to redress the wrongs addressed herein.

FIRST CLAIM FOR RELIEF

**Disability-Based Discrimination in Violation of
The Americans with Disabilities Act of 1990
42 U.S.C. § 12112(a)
Against Defendant NUMMI**

31. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 30, above.

32. The ADA prohibits an employer from discriminating “against a qualified individual with a disability because of the disability of such individual in regard to . . . other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). Further, the ADA prohibits an employer from “limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.” 42 U.S.C. § 12112(b)(1).

33. In violation of plaintiff's rights under the ADA to be free from disability-based discrimination in employment, Defendants NUMMI and TOYOTA crafted a severance package that deprives a valuable bonus enhancement to employees who were not actively working between October 2009 and April 1, 2010. Defendants were well aware that plaintiff and hundreds of additional workers – many with decades of service to NUMMI – were on leave because of disability. Defendant TOYOTA had previously offered a severance package for a large plant layoff that did not distinguish between employees who had recently been actively working and employees who had recently been on a leave for disability. By denying the bonus enhancement to persons on leave because of disability, Defendant NUMMI violated the ADA.

34. In violation of plaintiff's rights under the ADA to be free from disability-based discrimination in employment, Defendant NUMMI denied transitional career services to employees who were not actively working between November 2009 and around March 19, 2010. As Defendants were well aware, Plaintiff and hundreds of additional workers were on leave

1 because of disability. By denying transitional career services to those on leave because of
2 disability, Defendant NUMMI violated the ADA.

3 35. Plaintiff is informed and believes, and thereupon alleges, that between October 2009 and
4 April 1, 2010, Defendant NUMMI failed and refused to reinstate and accommodate many
5 disabled employees as part of an unlawful scheme to deny such workers the benefits of
6 transitional vocational services and/or the bonus enhancement.

7 36. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
8 with reckless disregard to plaintiff's right to be free from discrimination based on disability.

9 37. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
10 lost employment benefits and other compensation, including the bonus enhancement.

11 38. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
12 emotional injuries.

13 39. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
14 injunctive and declaratory relief and attorneys' fees and costs.

15 **SECOND CLAIM FOR RELIEF**
16 Disability-Based Discrimination in Violation of
17 The Americans with Disabilities Act of 1990
18 42 U.S.C. §§ 12112(b)(6), 12113(a)
19 Against Defendant NUMMI

20 40. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
21 paragraphs 1 through 39, above.

22 41. The ADA prohibits an employer from using "selection criteria that screen out or tend to
23 screen out an individual with a disability or a class of individuals with disabilities" unless such
24 criteria are shown to be job related and consistent with business necessity. 42 U.S.C. §§
25 12112(b)(6), 12113(a).

26 42. In violation of plaintiff's rights under the ADA to be free from disability-based
27 discrimination in employment, Defendants NUMMI and TOYOTA crafted a severance package
28 that deprives a valuable bonus enhancement to employees who were not actively working
29 between October 2009 and April 1, 2010. Without a job-related business-necessity justification,
the active-work requirement functions to screen out Plaintiff and other workers with disabilities

1 from the benefits of the severance package.

2 43. In violation of plaintiff's rights under the ADA to be free from disability-based
3 discrimination in employment, Defendants NUMMI denied transitional career services to
4 employees who were not actively working between November 2009 and around March 19, 2010.
5 Plaintiff and additional workers were on leave because of disability. Without a job-related
6 business-necessity justification, the active-work requirement functioned to screen out Plaintiff
7 and other workers with disabilities from the benefits of transitional career services.

8 44. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
9 with reckless disregard to plaintiff's right to be free from discrimination based on disability.

10 45. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
11 lost employment benefits and other compensation, including the bonus enhancement.

12 46. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
13 emotional injuries.

14 47. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
15 injunctive and declaratory relief and attorneys' fees and costs.

16 **THIRD CLAIM FOR RELIEF**

17 Disability-Based Discrimination in Violation of
18 California's Fair Employment and Housing Act
19 Cal. Gov't Code § 12940(a)
Against Defendant NUMMI

20 48. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
21 paragraphs 1 through 47, above.

22 49. It is unlawful under the FEHA for an employer to discriminate against an employee based
23 on the disability of that person. Cal. Gov't Code §§ 12926(i), 12940(a).

24 50. In violation of plaintiff's rights under the FEHA to be free from disability-based
25 discrimination in employment, Defendants NUMMI and TOYOTA crafted a severance package
26 that deprives a valuable bonus enhancement to employees who were not actively working
27 between October 2009 and April 1, 2010. Defendants were well aware that plaintiff and
28 hundreds of additional workers – many with decades of service to NUMMI – were on leave
29 because of disability. Defendant TOYOTA had previously offered a severance package for a

1 large plant closure that did not distinguish between employees who had recently been actively
2 working and employees who had recently been on a leave for disability. By denying the bonus
3 enhancement to persons on leave because of disability, Defendant NUMMI violated the ADA.

4 51. In violation of plaintiff's rights under the ADA to be free from disability-based
5 discrimination in employment, Defendant NUMMI denied transitional career services to
6 employees who were not actively working between November 2009 and around March 19, 2010.
7 As Defendants were well aware, Plaintiff and hundreds of additional workers were on leave
8 because of disability. By denying transitional career services to those on leave because of
9 disability, Defendant NUMMI violated the ADA.

10 52. Plaintiff is informed and believes, and thereupon alleges, that between October 2009 and
11 April 1, 2010, Defendant NUMMI failed and refused to reinstate and accommodate many
12 disabled employees as part of an unlawful scheme to deny such workers the benefits of
13 transitional vocational services and/or the bonus enhancement.

14 53. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
15 with reckless disregard to plaintiff's right to be free from discrimination based on disability.

16 54. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
17 lost employment benefits and other compensation, including the bonus enhancement.

18 55. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
19 emotional injuries.

20 56. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
21 injunctive and declaratory relief and attorneys' fees and costs.

22 **FOURTH CLAIM FOR RELIEF**

23 Disability-Based Discrimination in Violation of
24 California's Fair Employment and Housing Act
25 Cal. Gov't Code § 12940(a)
26 Against Defendant NUMMI

27 57. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
28 paragraphs 1 through 56, above.

29 58. It is unlawful under the FEHA for an employer to discriminate against an employee based
on the disability of that person. Cal. Gov't Code §§ 12926(i), 12940(a).

1 59. Selection criteria that operate to exclude minorities such as disabled persons from
2 employment opportunities must be job-related and consistent with business necessity. *City and*
3 *County of San Francisco v. Fair Empl. & Hous. Comm'n*, 191 Cal. App. 3d 976, 989 (1987); 2
4 C.C.R. § 7287.4(a), (e) ("any policy or practice of any employer or other covered entity which as
5 an adverse impact on employment opportunities of individuals on a basis enumerated in the act is
6 unlawful unless the policy or practice is job-related, [meaning shown to be] sufficiently related to
7 an essential function of the job in question to warrant its use."); *see also* 2 C.C.R. § 7286.7(a)
8 and (b) (practices which discriminate must be necessary to the safe operation of the business, and
9 may yet be impermissible if there is a less discriminatory alternative practice).

10 60. In violation of plaintiff's rights under the FEHA to be free from disability-based
11 discrimination in employment, Defendants NUMMI and TOYOTA crafted a severance package
12 that deprives a valuable bonus enhancement to employees who were not actively working
13 between October 2009 and April 1, 2010. Without a job-related business-necessity justification,
14 the active-work requirement has a disparate impact on Plaintiff and other workers with
15 disabilities, and functions to deny them the benefits of the severance package on the basis of
16 disability.

17 61. In violation of plaintiff's rights under the FEHA to be free from disability-based
18 discrimination in employment, Defendants NUMMI denied transitional career services to
19 employees who were not actively working between November 2009 and around March 19, 2010.
20 Plaintiff and additional workers were on leave because of disability. Without justification, the
21 active-work requirement functioned to adversely classify plaintiff and other workers with
22 disabilities, and to screen out such individuals from enjoying the benefits of transitional career
23 services.

24 62. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
25 with reckless disregard to plaintiff's right to be free from discrimination based on disability.

26 63. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
27 lost employment benefits and other compensation, including the bonus enhancement.

28 64. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including

1 emotional injuries.

2 65. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
3 injunctive and declaratory relief and attorneys' fees and costs.

4 **FIFTH CLAIM FOR RELIEF**

5 Interference with Rights Protected by the ADA
6 In Violation of the Americans with Disabilities Act of 1990
7 42 U.S.C. § 12203(b)
8 Against All Defendants

9 66. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
10 paragraphs 1 through 65, above.

11 67. Under the ADA, it is unlawful for any person to "interfere with any individual in the
12 exercise or enjoyment of ... any right granted or protected by this chapter." 42 U.S.C. §
13 12203(b).

14 68. In crafting and implementing a severance package that deprives valuable bonus
15 enhancements to hundreds of NUMMI employees who were not actively working due to
16 disability between October 2009 and April 1, 2010, defendants NUMMI and TOYOTA
17 interfered with the ADA rights of these employees.

18 69. In denying transitional career services to hundreds of NUMMI employees who were not
19 actively working due to disability between October 2009 and April 1, 2010, defendant NUMMI
20 interfered with the ADA rights of these employees.

21 70. Defendants' unlawful actions were intentional, willful, malicious and/or done with
22 reckless disregard to plaintiff's right to be free from discrimination based on disability.

23 71. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
24 lost employment benefits and other compensation, including the bonus enhancement.

25 72. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
26 emotional injuries.

27 73. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
28 injunctive and declaratory relief and attorneys' fees and costs.

29 **SIXTH CLAIM FOR RELIEF**

Participation in Discriminatory Contractual Arrangements in Violation of

The Americans with Disabilities Act
42 U.S.C. § 12112(b)(2)
Against Defendant NUMMI

74. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 73, above.

75. The ADA prohibits an employer from “participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter.” 42 U.S.C. § 12112(b)(2).

76. Here, Defendant NUMMI has participated in contractual and other arrangements with Defendant Toyota as well as with United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 2244. These contractual and other arrangements have had the effect of discrimination in violation of the ADA, as described herein.

77. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done with reckless disregard to plaintiff's right to be free from discrimination based on disability.

78. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer lost employment benefits and other compensation, including the bonus enhancement.

79. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including emotional injuries.

80. Plaintiff is entitled to compensatory damages, any lost benefits and compensation, injunctive and declaratory relief and attorneys' fees and costs.

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting in Violation of
California's Fair Employment and Housing Act
Cal. Gov't Code § 12940(i)
Against All Defendants

81. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 80, above.

82. Under California's FEHA, it is unlawful for "any person to aid [or] abet ... the doing of any of the acts forbidden under this part[.]" Cal. Gov't Code § 12940(i).

83. By engaging in the conduct described herein, Defendants NUMMI and TOYOTA have

1 aided and abetted in the doing of discriminatory acts that are prohibited by the FEHA.

2 84. Defendants' unlawful actions were intentional, willful, malicious and/or done with
3 reckless disregard to plaintiff's right to be free from discrimination based on disability.

4 85. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
5 lost employment benefits and other compensation, including the bonus enhancement.

6 86. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
7 emotional injuries.

8 87. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
9 injunctive and declaratory relief and attorneys' fees and costs.

10 **EIGHTH CLAIM FOR RELIEF**

11 Failure to Accommodate in Violation of
12 The Americans with Disabilities Act of 1990
13 42 U.S.C. § 12112(b)(5)(A)
14 Against Defendant NUMMI

15 88. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
16 paragraphs 1 through 87, above.

17 89. Under the ADA, it is unlawful for an employer "not [to] mak[e] reasonable
18 accommodations to the known physical or mental limitations of an otherwise qualified individual
19 with a disability." 42 U.S.C. § 12112(b)(5)(A).

20 90. A medical leave for treatment and recovery is a form of reasonable accommodation. For
21 such leave to be an effective accommodation, the employer must return the employee to active
22 work when she or he is recovered sufficiently to perform their job duties with or without on-the-
23 job accommodations.

24 91. In violation of Plaintiff COOKSON's rights to reasonable accommodation and
25 nondiscrimination under the ADA, Defendant NUMMI refused and failed to reinstate and retain
26 each of them when they sought to return to work from medical leave. Further, Defendant
27 NUMMI failed to consider or provide any on-the-job accommodations COOKSON might have
28 required to return to work.

29 92. Defendant NUMMI failed to engage in any good faith, interactive process to discuss and
determine any reasonable accommodations that would have enabled Plaintiffs COOKSON to

1 return to work from medical leave.

2 93. Plaintiff is informed and believes, and thereupon alleges, that between October 2009 and
3 April 1, 2010, Defendant NUMMI failed and refused to reinstate and accommodate many
4 disabled employees as part of an unlawful scheme to deny such workers the benefits of
5 transitional vocational services and/or the bonus enhancement.

6 94. Defendant NUMMI's unlawful actions and inactions were intentional, willful, malicious
7 and/or done with reckless disregard to COOKSON's rights to reasonable accommodations under
8 law.

9 95. As a proximate result of these unlawful acts, Plaintiff COOKSON has suffered and
10 continues to suffer lost wages and employment benefits, and other compensation, including the
11 bonus enhancement.

12 96. As a proximate result of these unlawful acts, Plaintiff COOKSON has suffered injuries,
13 including emotional injuries.

14 97. Plaintiff COOKSON is entitled to compensatory damages, any lost wages and benefits,
15 injunctive and declaratory relief and attorneys' fees and costs.

16 **NINTH CLAIM FOR RELIEF**

17 Failure to Accommodate in Violation of
18 California's Fair Employment and Housing Act
19 Cal. Gov't Code § 12940(a)(1), (m), (n)
Against Defendant NUMMI

20 98. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
21 paragraphs 1 through 97, above.

22 99. Under the FEHA, it is an unlawful employment practice for an employer to fail to make
23 reasonable accommodation for the known disability of an employee, or to fail to engage in a
24 timely, good faith, interactive process with employees who needs accommodation. Cal. Gov't
25 Code § 12940(a)(1), (m), (n).

26 100. A medical leave for treatment and recovery is a form of reasonable accommodation. For
27 such leave to be an effective accommodation, the employer must return the employee to active
28 work when she or he is recovered sufficiently to perform their job duties with or without on-the-
29 job accommodations.

1 101. In violation of Plaintiff COOKSON's rights to reasonable accommodations under the
2 FEHA, Defendant NUMMI refused and failed to reinstate and retain him when he sought to
3 return to work from medical leave. Further, Defendant NUMMI failed to consider or provide any
4 on-the-job accommodations Plaintiff COOKSON might have required to return to work.

5 102. Defendant NUMMI failed to engage in any good faith, interactive process to discuss and
6 determine any reasonable accommodations that would have enabled Plaintiff COOKSON to
7 return to work from medical leave.

8 103. Plaintiff is informed and believes, and thereupon alleges, that between October 2009 and
9 April 1, 2010, Defendant NUMMI failed and refused to reinstate and accommodate many
10 disabled employees as part of an unlawful scheme to deny such workers the benefits of
11 transitional vocational services and/or the bonus enhancement.

12 104. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
13 with reckless disregard to Plaintiff COOKSON'S rights to reasonable accommodations under
14 law.

15 105. As a proximate result of these unlawful acts, plaintiff has suffered and continues to suffer
16 lost wages and employment benefits, and other compensation, including the bonus enhancement.

17 106. As a proximate result of these unlawful acts, plaintiff has suffered injuries, including
18 emotional injuries.

19 107. Plaintiff COOKSON is entitled to compensatory damages, any lost wages and benefits,
20 injunctive and declaratory relief and attorneys' fees and costs.

21 **TENTH CLAIM FOR RELIEF**

22 Failure to Engage in the Interactive Process in Violation of
23 California's Fair Employment and Housing Act
24 Cal. Gov't Code § 12940(n)
25 Against Defendant NUMMI

26 108. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
27 paragraphs 1 through 107, above.

28 109. Under the FEHA, it is an unlawful employment practice for an employer to fail to engage
29 in a timely, good faith, interactive process with an employee with a disability to determine
effective reasonable accommodations in response to a request for reasonable accommodation.

1 Cal. Gov't Code § 12940(n).

2 110. Here, Plaintiff COOKSON requested accommodation through his efforts to return to
3 work. Defendant NUMMI failed to engage in a good faith, interactive process to discuss
4 requests for accommodation, and to determine effective and reasonable accommodations that
5 would have enabled Plaintiff COOKSON to retain his employment. Instead, Defendant NUMMI
6 refused to reinstate and retain him.

7 111. Defendant NUMMI's unlawful actions were intentional, willful, malicious and/or done
8 with reckless disregard to Plaintiff COOKSON's right to reasonable accommodation and the
9 interactive process.

10 112. As a proximate result of these unlawful acts, Plaintiff COOKSON has suffered and
11 continues to suffer lost wages, employment benefits, and other compensation, including the
12 bonus enhancement.

13 113. As a proximate result of these unlawful acts, Plaintiff COOKSON has suffered injury,
14 including emotional injury.

15 114. Plaintiff COOKSON is entitled to compensatory damages, any lost wages and benefits,
16 injunctive and declaratory relief and attorneys' fees and costs.

17 **ELEVENTH CLAIM FOR RELIEF**

18 Adverse Actions
19 In Violation of California's Public Policy
20 Against All Defendants

21 115. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
22 paragraphs 1 through 114, above.

23 116. It is the public policy of the State of California to bar employers from discriminating
24 against their employees because of disability. This public policy is well grounded in state and
25 federal statutes, including the ADA, the FEHA, and the Unfair Business Practices Act.

26 117. By discriminating against plaintiff on the basis of disability, Defendants NUMMI and
27 TOYOTA violated California's public policy.

28 118. Defendants' unlawful actions were intentional, willful, malicious and/or done with
29 reckless disregard to plaintiff's rights.

1 119. As a proximate result of these unlawful acts, has suffered and continues to suffer lost
 2 wages, employment benefits, and other compensation including the bonus enhancement.

3 120. As a further proximate result of these unlawful acts, plaintiff has suffered and continues
 4 to suffer injury, including emotional injury.

5 121. Plaintiff is entitled to compensatory damages, any lost wages and benefits, injunctive and
 6 declaratory relief and attorneys' fees and costs.

7 **TWELTH CLAIM FOR RELIEF**

8 Unlawful Business Practices in Violation of
 9 California's Unlawful Business Practices Act,
 Cal. Business & Prof. Code § 17200, *et seq.*
 10 Against All Defendants

11 122. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
 12 paragraphs 1 through 121, above.

13 123. Unfair practices prohibited by California's Unfair Business Practices act include "any
 14 unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

15 124. Defendants NUMMI and TOYOTA have committed unlawful and unfair business
 16 practices, including but not limited to the following:

- 17 (a) discriminating against plaintiff on the basis of disability in violation of the ADA
 and the FEHA;
- 18 (c) failing to accommodate Plaintiff Cookson to engage in the interactive process in
 violation of the ADA and the FEHA;
- 19 (d) failing to disclose that severance rights would be adversely impacted by being on
 a leave of absence, and informing plaintiff on leave that he need not report for
 20 duty or otherwise check their status;
- 21 (e) offering a severance package with unconscionable and illegal terms;
- 22 (f) discriminating against plaintiff for filing or making known his intention to file a
 23 claim for compensation; and
- 24 (g) violating California's public policy.

25 125. As a proximate result of the unlawful and unfair business practices of defendants, and
 26 each of them, plaintiff has suffered injury in fact and has lost money or property, including the
 27 COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

1 bonus enhancement.

2 126. Plaintiff is entitled to injunctive relief, reformation of their severance packages,
3 transitional services, restitution, and attorneys' fees and costs.

4 **RELIEF REQUESTED**

5 WHEREFORE, plaintiff respectfully requests that this Court:

- 6 1. Order defendants to pay plaintiff for the compensation denied or lost to plaintiff
7 by reason of defendants' violations of the law, in an amount to be proven at trial;
- 8 2. Order defendants to pay compensatory damages for emotional pain and suffering
9 in an amount to be proven at trial;
- 10 3. Order defendants to pay exemplary and punitive damages;
- 11 4. Order defendants to pay restitution;
- 12 5. Order defendants to pay plaintiff's reasonable attorneys' fees, reasonable expert
13 witness fees, and other costs of the action;
- 14 6. Order defendants to pay plaintiff's interest on such damages as are appropriate,
15 including pre- and post-judgment interest; and
- 16 11. Grant such other and further relief as this Court may deem proper and just.

17 **JURY DEMAND**

18 Plaintiff demands trial by jury of all claims and causes of action so triable.

19 Dated: July 2, 2010

20 Respectfully submitted,

21 By:


22 William Cookson